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ABSTRACT

The aims and activities of the CITIZENS Communications Center are summarized in this pamphlet. CITIZENS, a Washington, D.C. based resource center, provides technical assistance, research and educational services to citizens and community groups attempting to remind the broadcast industry of its duty to serve the interest of all segments of the public. The group's activities are centered around three goals: opening the federal regulatory process to adversary procedures and participation by citizens; aiding citizens and groups in participating in the regulatory and decision-making process and obtaining media access; and informing citizens and community groups of their rights to participate in the decision-making process and to have access to the broadcast media, as well as educating and training advocates to assert these rights. An appendix contains the details of several CITIZENS projects that were carried on in pursuit of these goals. (Author/JY)

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PROGRESS REPORT

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May 1, 1971

SOME HIGHLIGHTS OF CITIZENS' WORK

Intervened in the largest television and radio station transfer in communications history and assisted community groups in negotiating from the purchaser a $1,000,000 commitment to minority programming and community consultation that marks a breakthrough in broadcaster-community relations.

Provided and is continuing to provide research and legal counsel in varying degrees for citizen groups seeking improved service and increased minority representation on all of the broadcast stations in Atlanta, KRON-TV in San Francisco, WSNT-AM in Sandersville, Georgia, WMAL-TV in Washington, D.C., several stations in Chicago, Detroit, Denver, Mobile, Columbus, Ohio, and WISC-TV in Madison.

Is appealing a decision of the F.C.C. denying citizens' groups the right to receive reimbursement of expenses, a right that is accorded applicants with a commercial interest in obtaining a license. The Commission's ruling would irreparably damage citizen participation in the administrative process by forcing community groups to bear prohibitive legal and other expenses.

Is challenging the F.C.C.'s "Statement of Policy on Comparative Renewals." The Policy Statement prevents newcomers from seeking a broadcast license until they have first demonstrated the incompetence of the incumbent. It limits the ability of community groups to influence local broadcasters by filing a license application that proposes improved services.

With another attorney, filed on behalf of a bipartisan group of 14 United States Senators a complaint that was a key factor in the recent ruling requiring the networks to accord time for responding to Presidential addresses on the Indochina War.

Is aiding several groups in their attempts to establish First Amendment rights -- the public's Constitutional right to hear all forms of political speech and to provide such speech an effective forum -- of access to television stations for broadcasting of advertisements opposing the desirability of bearing arms and of advertisements opposing the Vietnam War.

CONTENTS

Introduction 1

Summary of Activities 3

- To open the federal regulatory process to adversary procedures and participation by citizens 3

- To aid citizens and groups without resources or technical skills in participating in the regulatory and decision-making process and obtaining media access 5

- To inform citizens and community groups of their rights to participate in the decision-making process and to have access to the broadcast media, as well as educating and training advocates to assert these rights 7

Background of CITIZENS 8

Purpose of CITIZENS 10

Personnel and Funding 11

Conclusion 12

Appendix i

APPENDIX CONTENTS

- Opening the federal regulatory process to adversary procedures and participation by citizens i

  Reimbursement of Citizen Groups i
  Ascertainment of Community Needs ii
  The Pastore Bill iv
  F.C.C. Statement of Policy Regarding Renewal Standards v
  Participation in Office of Management and Budget Hearings vii
  Action for Children's Television ix
  Summer Study of the F.C.C. ix
  F.C.C. CATV Panel x

- Aiding citizens and groups without resources or technical skills in participating in the regulatory and decision-making process and obtaining media access xi

  Capital Cities Transfer xi
  Aid to Petitioning Groups xiv
    Atlanta xv
    KRON Proceeding xvii
    Sandersville, Georgia xix
    Columbus, Ohio xx
    Detroit, Michigan xx
    Madison, Wisconsin xxi
  Right of Access xxi
  Presentation of Views Opposing Regular Military Service xxii
  Right of Response to Presidential Addresses xxiii
  Alabama Educational Television Commission Challenge xxiv
  Back Alley Theatre Complaint xxv
  Program Format Changes xxvi
  Black Licensees xxviii
  Miscellaneous Activities xxix

- Informing citizens and community groups of their rights to participate in the decision-making process and to have access to the broadcast media, as well as educating and training advocates to assert these rights xxxi

INTRODUCTION

> . . .[T]he process of challenge and concession is getting out of hand when Washington-based and Washington-wise lawyers start making careers of representing the challengers . . . . If the trend persists. . . the system will be degraded.
> Broadcasting, Jan. 11, 1971 (Editorial)

The editorial quoted above was prompted by the intervention of the CITIZENS COMMUNICATIONS CENTER in the largest station sale in broadcasting history. Before the challenge to that transaction was dropped, citizen groups extracted a commitment from the purchaser to provide $1,000,000 for minority programming and to establish community advisory boards to assure that the performance of the newly acquired stations would be responsive to minority needs and interests. CITIZENS has indeed made a "career . . . of representing the challengers," for the challengers are the American people -- the owners of the airwaves used by the broadcast media.

CITIZENS, a Washington, D.C. based resource center, provides technical assistance, research, and educational services to citizens and community groups attempting to remind the broadcast industry

that it is a trustee for the public, not the owner, of the valuable resource it exploits for private gains, and that broadcasters must meet the diverse needs and interests of all segments of the public. Given the broadcast media's pervasive impact on our lives, the quality of human life itself may ultimately depend on our ability to control them. CITIZENS believes that such control will only come from an open broadcast media. This in turn requires serious efforts to assure that the decision-making process with respect to these media, at both the local and federal levels, is kept open to the participation of the broad constituencies of the media, including minorities -- whether they be racial, economic, social, political, or whatever -- the disenfranchised, the consumer, and the alienated. CITIZENS' purpose is to help keep the decision-making process open and to provide such groups with the professional and technical assistance that is necessary to assure that their participation is meaningful. The following pages catalog CITIZENS' efforts in the nineteen months since it was established in mid-August, 1969.

SUMMARY OF ACTIVITIES*

Generally speaking, CITIZENS' activities fall roughly into three categories:

- Opening the federal regulatory process to adversary procedures and participation by citizens;
- Aiding citizens and groups without resources or technical skills in participating in the regulatory and decision-making process and obtaining media access; and
- Informing citizens and community groups of their rights to participate in the decision-making process and to have access to the broadcast media, as well as educating and training advocates to assert these rights.

* * *

1. To open the federal regulatory process to adversary procedures and participation by citizens,

CITIZENS:

> Is appealing a decision of the F.C.C. denying citizens' groups the right to receive reimbursement of expenses, a right that is accorded applicants with a commercial interest in obtaining a license. The Commission's ruling would irreparably damage citizen participation in the administrative process by forcing community groups to bear prohibitive legal and other expenses (Appendix, p. i);

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* An expanded description of these activities appears in the Appendix. References to the Appendix appear immediately following each summary.

Successfully opened to public comment the F.C.C.'s in camera attempts to modify its "ascertainment of community needs" standards at the broadcasting industry's request and submitted significant comments in that proceeding (Appendix, p.ii);

Appeared in proceedings before the F.C.C. and is now appearing in the courts to challenge the F.C.C.'s "Statement of Policy on Comparative Renewals." The Policy Statement prevents newcomers from seeking a broadcast license until they have first demonstrated the incompetence of the incumbent. It drastically limits the ability of community groups to influence local broadcasters by filing a license application that proposes improved services (Appendix, p. v);

Responded to requests for non-partisan and informational research on Senator Pastore's bill, S.2004, proposing that no competing license application could be considered by the Commission until the incumbent licensee had been disqualified. The resistance that developed to this bill eventually resulted in the "statement of policy" litigation (described in paragraph preceding this one) (Appendix, p.iv);

Opened to public participation conferences between the industry-dominated Advisory Council on Federal Reports; Committee on the Communications Industry and the Office of Management and Budget (Appendix, p. vii);

Assisted dozens of citizens in the filing of comments on a rule making that would ban excessive commercialism in children's television (Appendix, p. ix);

Organized a study investigation of the Federal Communications Commission and is hopeful that the results will yield a publishable report (Appendix, p. ix); and

Participated in hearings conducted before the F.C.C.'s Commissioners on proposed

overhauling of cable television regulations (Appendix, pp.x).

2. To aid citizens and groups without resources or technical skills in participating in the regulatory and decision-making process and obtaining media access, CITIZENS:

Intervened in a proceeding involving the largest television and radio station transfer in communications history and assisted community groups in negotiating from the purchaser a $1,000,000 commitment to minority programming and community consultation that marks a breakthrough in broadcaster-community relations. Much of the legal groundwork for this action was conducted by the students participating in the summer study (Appendix, p. xi);

Provided and is continuing to provide research and legal counsel in varying degrees for citizen groups challenging all of the broadcast stations in Atlanta, KRON-TV in San Francisco, WSNT-AM in Sandersville, Georgia, WMAL-TV in Washington, D.C., several stations in Chicago, Detroit, Denver, Mobile, Columbus, Ohio, and WISC-TV in Madison, Wisconsin. Most of these challenges involve ensuring that broadcasters render increased services to minorities and observe federal statutes and regulations relating to equal employment opportunities (Appendix, p. xiv);

As a result of these experiences, has been able to work with a number of groups in resolving conflicts between local groups and local media in several cities without resorting to formal legal proceedings or going beyond making it clear that formal proceedings might be brought if conflicts were not resolved informally (Appendix, pp.xiv);

Is representing groups such as the National Society of Friends and (with another attorney) the Business Executives Move for Vietnam Peace (BEM) in their attempts to establish First Amendment rights -- the public's Constitutional right to hear all forms of political speech and to provide such speech an effective forum -- of access to television stations for broadcasting of advertisements opposing the desirability of bearing arms and of advertisements opposing the Vietnam War. In response to a well financed army recruitment campaign, a new challenge on behalf of the Hunter College National Student Association Peace Committee has been undertaken (Appendix, p. xxi);

With another attorney, filed on behalf of a bipartisan group of fourteen United States Senators a complaint with the F.C.C. that was a key factor in the Commission's recent ruling requiring that the networks accord time for spokesmen to respond to Presidential addresses on the Indochina War (Appendix, p. xxiii);

Is acting as counsel in a challenge to a state educational television system that has discriminated against blacks (Appendix, p. xxiv);

Assisted a Washington, D.C. group in obtaining an explicit ruling that prohibits broadcast licensees from discriminating in programming (Appendix, p. xxv);

Has joined with another attorney to represent citizen groups in San Francisco challenging a local station's deletion of its "soul" music format and arbitrary firing of all black employees as a result of the format change. CITIZENS has undertaken a similar challenge in Greenwood, Mississippi, where deletion of the station's "black" format left the area's black majority with no program service. These challenges raise the question of the F.C.C.'s duty to prevent inadequate service between license renewals and question whether a broadcaster can substantially alter his program service without advance consultation with the public (Appendix, p. xxvi);

Assisted a group of blacks in its attempt to file a license application for the last FM-radio channel available in an upstate New York city (Appendix, p. xxviii);

Spent considerable time on other minor inquiries covering such problems as on-the-air personal attacks on attorneys for agricultural workers; rules governing radio stations on Indian reservations; fairness complaints in a number of areas, e.g., against advertisements depicting stereotypical images of minorities; preparation of anti-pollution material; etc. (Appendix, p. xxix).

3. To inform citizens and community groups of their rights to participate in the decision-making process and to have access to the broadcast media, as well as educating and training advocates to assert these rights, CITIZENS:

Is preparing a handbook on citizens' access to the F.C.C. to be published by summer, 1971 (now available in draft form);

Has participated in workshops and conferences across the country to discuss ways citizens can influence the quality of their broadcasting services (Appendix, p. xxxi);

Has tried to multiply the effects of its endeavors by encouraging groups which have received help from CITIZENS to assist other community groups. For example, the strategy developed by CITIZENS in Atlanta of seeking waivers of the deadline for filing oppositions to the renewal of all licenses in an area became a model for other cities. The Atlanta community leaders who gained experience during their own challenge provided advice to some of the groups in other cities (Appendix, p. xvii);

> Supervised the work of thirteen law students during summer, 1970, in an investigation of the F.C.C. Four of the students have indicated a desire to concentrate on communications law work of the type performed by CITIZENS and four of the students are presently working in their local communities on advocacy projects involving media reform (Appendix, p. ix);
>
> Has helped reporters from newspapers, journals, and magazines develop articles about community participation in broadcasting. CITIZENS has aided numerous graduate and law students in preparing theses and articles on the media (Appendix, p. xxxi).

BACKGROUND OF CITIZENS

The Communications Act of 1934 declares that the airwaves are owned by the public. Portions of the airwaves, called frequencies, are licensed to private broadcasters so long as they use them in the public interest. The Communications Act intended to establish a licensing scheme to create a network of local stations responsive to their respective communities' needs and interests.

Since then, broadcasting has become an "industry," divorced from its original purposes and the constituencies it is supposed to serve. Broadcasters have come to see themselves as the owners, not the fiduciaries, of the public's airwaves; and they have come to see it as their right, not the public's, to

decide on the use to be made of the airwaves. With the tremendous resources at their disposal, the powerful broadcast lobby and bar have generally succeeded in pushing industry-oriented rules and legislation through the F.C.C. and Congress. Because only the industry's point of view is heard, the F.C.C., the very agency charged with regulating the broadcast media, has become a captive of the broadcasting industry. Given the present structure of American television and radio -- a powerful medium whose use is concentrated in the hands of a relatively few profit-motivated broadcasters -- the entire broadcasting system, either by not understanding or choosing to ignore the programming tastes and requirements of broad sectors of the public, has become completely insensitive, if not hostile, to citizen participation in the regulatory processes.

Communications law reflects these biases. Citizen and community participation in the regulation of broadcasting has been largely ignored in spite of the grave consequences of such neglect. Even though the health of our social and political life -- indeed, the very existence of our democracy -- depends to a large extent on public access to the "media marketplace

of ideas," large segments of the public are denied this access and the right to participate in proceedings governing the use of the airwaves they own.

PURPOSE OF CITIZENS

CITIZENS was created in response to this media crisis. By using advocacy, research, and educational techniques to open the decision-making process to groups -- the disenfranchised, the poor, the racial minorities, the consumer, and proponents of unpopular causes -- who have traditionally been denied access to the decision-making and bargaining processes which determine what interests are served by broadcasting, who holds station licenses, and who enjoys industry employment, CITIZENS is strengthening the hand of those who are asserting their rights of access and to participate in the regulatory process at the local and the federal administrative and judicial level. CITIZENS' purpose is to assure that the end product of the broadcast media reflects and is responsive to the total constituency of the media.

CITIZENS directs itself to reform of and intervention in the decision-making process. It is

not attempting to restructure broadcasting or create a model "reformed" media. If the decision-making process is kept open so that divergent, competing, and sometimes antagonistic interests can vie for attention and possibly be heard, there may indeed be a "reform" of the media itself. But it will undoubtedly be a by-product of the struggle between conflicting views and interests.

CITIZENS is designed to provide a bridge of effective action between the local level and the federal regulatory process. It aids local groups in developing the competence to deal with their local broadcasters while they acquire the skills necessary to invoke the federal regulatory processes. Such continuing interaction with local broadcasters and the F.C.C. is required if the broadcast media are to become responsive.

PERSONNEL AND FUNDING

CITIZENS' sole full-time employee from mid-August, 1969, to February, 1970, was its Executive Director, Albert H. Kramer. Secretarial help was part-time. In February, 1970, an administrative-research assistant was added. In October, 1970, a

second attorney, Robert J. Stein, and a full-time secretary joined CITIZENS. Shortly thereafter a second secretary was added to the staff. Thus, the present personnel consists of two attorneys, two secretarial-administrative assistants, Ila Gillaspie and Virginia Schofield, and a research assistant, Suzie Dillon.

Funding for the first 14 months of CITIZENS' operations came from the Midas International Foundation, with overhead and part-time secretarial assistance provided by the Robert F. Kennedy Memorial. The Robert F. Kennedy Memorial is continuing to provide some support and the Stern Family Fund provided a grant in October, 1970. Several smaller but helpful contributions have also been received.

CONCLUSION

In his book, How to Talk Back to Your Television Set, Federal Communications Commissioner Nicholas Johnson expressed the fear that the broadcasting industry may soon become uncontrollably powerful. There is still time to stop it, but only through the legal processes that afford the public the power to require broadcasters to meet their duty to provide adequate service to the entire public.

Citizen participation in the regulatory process can have an impact on the responsiveness of the media to the needs of those who must see and hear what is put out over the airwaves. Test cases are important, and CITIZENS is involved in a number of cases raising novel questions. But in addition, CITIZENS has made the first attempt to provide a continuing adversary input to the day-in, day-out grinding of the regulatory wheels. The test cases are only a small part of the battle; someone must help as well to assert the rights established by those cases. CITIZENS has performed and is performing both functions.

Apart from its major projects, the daily fare of activities is far less dramatic: answering the small inquiries, specific questions, and telling groups and citizens of their right to responsive media.

This report itself is an acknowledgment that the adversary system can yield some results. More important is that the industry itself has acknowledged its fear of the adversary process. Broadcasting magazine, the leading industry trade publication, put it best in the quote noted at the beginning of this report. It bears repeating:

> . . . [T]he process of challenge and concession is getting out of hand when Washington-based and Washington-wise lawyers start making careers of representing the challengers . . . . If the trend persists . . . the system will be degraded.
> Broadcasting, Jan. 11, 1971 (Editorial)

That editorial criticized a commitment by a broadcaster, as a result of a challenge instituted by CITIZENS, to provide improved service to its service area. Continuing results are dependent on continuing vigilance. Even as this Report is being written, the Commission has announced a proposed overhaul of the rules governing citizen participation that will limit public access to the regulatory process. CITIZENS hopes to continue to participate in the efforts to keep those processes open. But the impetus and the moving force must come from the people themselves.

* * *

APPENDIX

This Appendix contains additional information on some of the activities listed in the "Summary of Activities" appearing on pages 3-8 of the Progress Report.

- Opening the federal regulatory process to adversary procedures and participation by citizens.

Reimbursement of Citizen Groups. In 1969, the Office of Communication of the United Church of Christ, a pioneer in fostering the involvement of citizens in the media, aided a Texarkana community group in launching a challenge against a local licensee. An agreement was reached whereby the challenge was withdrawn in return for improved service. The F.C.C. approved the agreement and withdrawal as being in the public interest. Shortly afterward, the licensee agreed to reimburse the Church for its out-of-pocket expenses. The F.C.C. refused to approve the reimbursement even though it has long allowed reimbursement agreements between private parties to a proceeding with competing economic interests.

The Church has asked CITIZENS to appeal the Commission's decision to the courts. The case has now been briefed and is awaiting argument.

The case is potentially of landmark significance. It challenges the F.C.C.'s discriminatory refusal to accord public groups, seeking no economic gain, the same right of reimbursement that is accorded parties with private economic interests. It's outcome can have an impact on the whole future of citizen participation. If citizen groups cannot obtain reimbursement for their expenses, the cost of litigation and participation in the regulatory process may become prohibitive. Not only are there too few groups like CITIZENS that can provide free counsel, but these groups are themselves dependent on foundations, and long run foundation support is highly unlikely. It is thus necessary for new sources of funding to be found. Reimbursement is one such source. It imposes upon errant licensees the costs incurred in calling them to task for their excesses.

Ascertainment of Community Needs. In December, 1969, Commissioner Bartley met in closed session with representatives of the Federal Communications Bar Association (a private bar of lawyers representing various broadcasting industry interests). The announced purpose of the meeting was to "clarify" the standards

which broadcasters must follow in surveying their communities' needs and interests, yet representatives of the public were not invited. Shortly before the meeting, CITIZENS learned that Commissioner Bartley planned to distribute, for the industry's comments, an F.C.C. draft proposal changing the community needs standards. Representing Black Efforts for Soul in Television (BEST), CITIZENS sought Commissioner Bartley's permission to attend the session, but was refused admittance.

When CITIZENS subsequently learned that an F.C.C. draft proposal had been distributed at the meeting, it formally protested to the Commission. On behalf of BEST, it urged that the public be allowed to comment on any proposed primer on community ascertainment. We believe that the intervention in this proceeding substantially influenced the Commission's subsequent decision to release the draft proposal for public comment.

The "Primer on Ascertainment of Community Needs" attracted voluminous comments. In addition to preparing a major set of comments on behalf of BEST, CITIZENS aided numerous other citizen and community groups in filing comments. Though considerably less than ideal

from a community point of view, the "Primer" was significantly strenghthened by public participation. On February, 23, 1971, the F.C C. adopted the Primer. But at the same time the Commission announced that it was considering repealing the Primer as to applicants for renewal of a license and applying it only to new license applicants. CITIZENS will participate in the F.C.C. proceedings to attempt to prevent this regressive step.

The Pastore Bill. In spring, 1969, apparently in response to pressure from broadcasters, Senator Pastore introduced S. 2004, a bill to amend the Communications Act of 1934. Under the present law, when a broadcaster's license is up for renewal, a competing application for the license may be filed. A comparative hearing is then held by the F.C.C. to determine whether the public would be better served by the incumbent licensee or by the competing applicant. S. 2004 proposed that no competing license application could be considered by the Commission until it had disqualified the incumbent licensee.

At first, S. 2004 went unnoticed by the general public. But gradually, community groups began to ask

CITIZENS whether the bill could potentially have an impact on the quality of broadcasting services. In response to these inquiries and requests for information, CITIZENS undertook to study the bill, and made the results of its research and analysis available to such groups and persons as requested them.

F.C.C. Statement of Policy Regarding Renewal Standards. The Pastore Bill was introduced in response to the F.C.C.'s decision revoking the license of station WHDH, Boston, Massachusetts, and granting it to a challenging citizens' group. Passage of S. 2004 seemed imminent. But as the public educated itself and received information about the bill through channels such as CITIZENS, opposition grew. Black community groups pointed out that the Pastore Bill would maintain, if not encourage, racism by freezing the existing white licensee structure of the broadcasting industry. Senators who might otherwise have favored the bill began to hesitate. The broadcasters sensed a growing disillusion with S. 2004 and turned to the Commission for relief.

Chairman Burch of the Commission proposed and the Commission approved a "Statement of Policy" which declared the Commission's intent to renew an

incumbent's license if its performance had been "substantially attuned to meeting the needs and interests of his service area." Henceforth, the Commission would disregard any problems of monopoly concentration of control, local management and ownership, and challengers' proposals for better service. This declared policy of granting virtually automatic license renewal alleviated the need for the Pastore legislation.

When CITIZENS learned of this statement of policy shortly before its adoption, it filed several legal actions on behalf of a community group at the Commission and in the courts. These actions included requests for injunctive relief, petitions for rule making, and several other petitions designed to insure public participation in the Commission's decision-making processes. These legal proceedings marked the first time that a community group had challenged the authority of the Commission to act on an issue intimately affecting the quality of broadcast service without prior public consultation.

The Commission rejected CITIZENS' requests to repeal the statement of policy, and we have appealed

the decision to the courts. The case has been briefed and argued and is now awaiting decision.

Participation in Office of Management and Budget Hearings. One little known aspect of the federal administrative process is the relation of the Office of Management and Budget (formerly the Budget Bureau) to federal regulatory agencies. Prior to adopting any form of general applicability, federal regulatory agencies, including the F.C.C., must submit the form to O.M.B. for approval. O.M.B. in turn is advised by Advisory Councils on Federal Reports. The Advisory Councils, which exist on an industry-by-industry basis, were established by Congress during World War II as the volume of required forms and reports mushroomed. Their original purpose was to prevent repetitious filings by advising O.M.B. whether a particular form or a particular question on a form submitted by a regulatory agency was necessary in view of other filing requirements. As time passed, these consultations became a vehicle for industry representatives to dilute the power of the federal agencies to gather information. The industry simply persuaded O.M.B. that the requested data was unnecessary, unduly burdensome, or repetitious. One such Advisory Council is the Committee on the Communications Industry.

CITIZENS believes that this procedure is another critical link in the decision-making process. In September, 1970, the Commission was about to launch an inquiry into conglomerate ownership of broadcast properties. It was necessary for the Commission to seek O.M.B. approval of the questionnaire. The procedure called for an O.M.B. officer to hold a meeting with the Committee on the Communications Industry to seek their advice on the form. CITIZENS was alerted to the meeting by the Public Interest Research Group and attended in an attempt to prevent industry representatives from watering down the questionnaire.

While it is difficult to assess success or failure because one can never know what would have happened had CITIZENS not attended, the questionnaire did emerge relatively unscathed. But apart from success or failure in this one instance, this marked the first time that these meetings have been open to the public. It is another milestone in opening hitherto closed proceedings to public participation. CITIZENS is now monitoring the activities of the Committee on the Communications Industry and O.M.B. and will attempt to participate in future meetings of significance to community groups.

Action for Children's Television. A group of Boston mothers, calling themselves Action for Children's Television (ACT), concerned about excessive commercialism in children's television, filed a proposal with the Commission that would ban advertising from children's programs. CITIZENS consulted with them on a number of matters and then agreed to provide guidance to any citizen desiring to file comments on the proposal. As a result, it aided in the filing of dozens of sets of comments, as well as providing numerous services to ACT in connection with the filing of these comments.

In the meantime, ACT grew and became more sophisticated. It is now a mature organization which has just received a large grant to sustain its activities. The women have generated national support. ACT's proposed rule, which seemed visionary at first, is now a pending rule making. Full credit must be given to this energetic group of women. But CITIZENS is proud to have assisted them in the beginning. We still maintain contact with ACT and discuss broad strategy with them as we are called upon.

Summer Study of the F.C.C. Working with special grants from the Charles F. Kettering Foundation,

the National Citizens Committee for Broadcasting, Consumers Union, Boston College Law School, the Robert F. Kennedy Memorial, and the Children's Foundation, CITIZENS organized and co-directed a summer study of the F.C.C. The purpose of the study was to investigate the agency itself, to prepare a guide to citizen access, and to prepare primers on a number of policy areas currently pending before the Commission. Thus far, the primary product of the study has been the Capital Cities-Triangle challenge described below. See p. xi. However, there remains a large amount of material to be digested and edited, and we are hopeful that additional legal actions, comments, and reports will emerge. Unfortunately, the tremendous workload at CITIZENS has prevented any staff person from beginning to systematically digest the materials.

F.C.C. CATV Panel. The Commission has just concluded a major set of hearings on the future direction of its regulation of CATV (cable television). CITIZENS accepted the F.C.C.'s invitation to appear on a panel. It entered testimony stressing the necessity of assuring adequate channel capacity to ensure access to any citizen group desiring it.

- Aiding citizens and groups without resources or technical skills in participating in the regulatory and decision-making process and obtaining media access.

Capital Cities Transfer. One of the areas examined in the student summer study of the F.C.C. was trading in station licenses. As a result, the largest station license transfer in history came under the scrutiny of very able student eyes. The transfer involved the selling of the broadcast properties of Triangle Publications Corporation, a media conglomerate. The bulk of the broadcast properties WFIL-TV-AM-FM, Philadelphia; WNHC-TV-AM-FM, New Haven; and KFRE-TV-AM-FM, Fresno were to be transferred to Capital Cities Broadcasting Corporation, another media conglomerate of smaller proportions. Capital Cities in turn planned to sell off the radio properties.

In November, 1970, acting on behalf of the summer study group, several sponsors of the study, and in its own behalf, CITIZENS filed a petition to deny the transfer because important public interest considerations were being ignored in the transaction. Capital Cities initiated discussions with CITIZENS

in the hope that an accommodation could be reached that would allow the transaction to go through. CITIZENS insisted that the public interest considerations involved must be vindicated before any accommodation could be reached. Moreover, vindication of these interests required consultation with groups in the communities affected by the transaction, not with CITIZENS. Capital Cities agreed to conduct an extraordinary series of consultations with community leaders in the three cities primarily affected by the transaction. Because of a time deadline on the transaction, the consultations had to be completed and agreement reached by year end 1970. Working on a literal round-the-clock basis for a four- to five-week period, the consultations and discussions were completed. Representatives of community groups were brought to Washington and they participated in the final discussions concluding the agreement. In the end, the decision to accept or reject the agreement was theirs.

The agreement marks a breakthrough on several fronts. Capital Cities pledged $1,000,000 to minority programming in the three cities over a three-year period. This marks the first time a broadcaster has made a specific commitment of this sort. Community advisory

groups were set up to assist Capital Cities in planning how the money is to be spent as well as to consult with Capital Cities on a continuing basis with regard to overall programming. Capital Cities agreed to a minimum number of prime time hours devoted to documentaries. Some of these will be position papers devoted to expressing the views of minorities rather than attempting to provide neutral, well rounded programs. Captial Cities also pledged itself to employment commitments.

Apart from the innovative features in the agreement, the process of reaching the agreement is of equal significance. It forced a major broadcaster to recognize that the right of citizens to participate in the regulatory process requires a broadcaster to sit down and deal with community groups across a table where each side is possessed of equal rights. And it gave the community leaders involved an opportunity to participate in sessions that have increased their awareness of their rights as well as the limitations on asserting them.

As a result of the agreement, the petition to deny was withdrawn. The transaction has been approved by the F.C.C. and the Commission's decision approving

the agreement incorporated the agreement. Capital Cities has assumed control of the three television stations.

Though the Commission's opinion approving the transfer to Capital Cities does compromise in differing degrees some of the important public interest policies surrounding this transaction, we are hopeful that the innovative nature of the agreement will outweigh some of these detriments. CITIZENS intends to continue to work with the community groups involved to ensure that the agreement is implemented.

Aid to Petitioning Groups. CITIZENS has been active in varying degrees in challenges all around the country. In some cities, the challenge has been to one station; in others, it has been a blanket challenge to all stations. CITIZENS' contribution has varied from city to city, depending on the organization and degree of sophistication of the local group, the difficulty of the issues, the closeness of the filing deadline, the availability of local counsel, etc. Only a few examples to illustrate the range of CITIZENS' involvement and the degree of growth in citizen knowledgeability are included in this detailed summary although CITIZENS has been involved in many more actions.

Atlanta

A coalition of black groups in Atlanta, Georgia, wishing to increase broadcaster responsiveness to local needs, notified the F.C.C. that it intended to challenge the renewals of the licenses of every station in the market because of their discrimination in employment and combined failure adequately to service the black community. But while negotiations about improved service dragged on over several months, the deadline for the filing of formal oppositions to license renewals drew closer.

CITIZENS advised the coalition to attempt a new strategy by seeking a blanket waiver of the filing date for formal petitions to deny. With CITIZENS' help, the coalition obtained from the Commission a 30-day waiver of the filing deadline -- giving it further time to resolve differences at the local level. This marked the first time that the Commission had granted a blanket waiver of its rules to allow negotiations between community groups and their broadcasters on an area-wide basis.

CITIZENS continued its daily contact with the Atlanta group in its negotiations. Several trips to Atlanta were made as the 30-day negotiating period

drew to a close in order to provide whatever assistance was needed. CITIZENS directly participated in some of the negotiations and prepared model petitions. It worked with a battery of local attorneys in developing negotiating strategies and fitting the model to particular situations.

The ability of the Atlanta coalition to invoke the federal regulatory processes apparently had a sobering effect on the Atlanta broadcasters. Here was a group displaying relative sophistication in invoking the labyrinthine rules that had so long been a tool of their oppression. At the end of the 30-day period, 24 out of 28 stations had signed agreements pledging improved service. Only four petitions to deny were filed and two of these were subsequently withdrawn when agreement was reached. The commitments of the broadcasters ranged all the way from seating blacks on the board of directors to hiring on-the-air black personnel to providing increased new coverage to the black community to purchasing goods and services from black enterprises.

There is no question but that many of the agreements could have been strengthened if additional legal manpower had been available. But aside from its own

particular successes, the Atlanta experience had a broader impact. The blanket "waiver-negotiate" strategy conceived by CITIZENS became a prototype in many cities. Equally important, many of these cities were able to use the strategy on their own, with little help from outside counsel. The Atlanta experience yielded lay counselors and organizers, spreading the impact of the valuable knowledge and experience that had been gained.

KRON Proceeding

San Francisco's Chronicle Publishing Company is the licensee of KRON-TV and KRON-FM and publishes the largest newspaper in the Bay Area. The Chronicle has entered into a joint operating agreement, of the type recently declared illegal by the United States Supreme Court, with the San Francisco Examiner, its only Bay Area-wide competitor. Two former employees of the Chronicle filed objections to the renewal of the station's license, arguing that Chronicle had an undue concentration of ownership of media in the Bay Area and had abused its monopolistic position. The petition raises novel issues regarding the extent to which concentration of control of the mass media will be tolerated.

Prior to our intervention on their behalf, the complainants' only counsel was a San Francisco attorney who was volunteering his time. Aligned against him was one of the larger and more prestigious San Francisco law firms (Cooper, White & Cooper), a second San Francisco law firm (Lester W. Spillane), and a battery of Washington attorneys from two of the city's leading law firms (Fletcher, Heald, Powell, Kenehan & Hildreth, and Wilmer, Cutler & Pickering). In total, these firms employ approximately a hundred lawyers.

In September, 1969, CITIZENS agreed to act as Washington counsel for the complainants. At each level it has faced the resources available to the formidable array of Chronicle's attorneys. It represented the complainants in pre-hearing conferences, has undertaken research on the r behalf, and has aided their San Francisco attorney in strategy and hearing arrangements. Between the time of CITIZENS' entry into the case and the start of the hearing, between 150 and 200 formal pleadings were filed, many of them quite voluminous. This does not include informal pleadings, exchanges of correspondence leading to agreements on certain issues, etc.

A hearing lasting several weeks and comprising several thousand pages of testimony and innumerable exhibits was finally held in San Francisco. In February, 1971, the Hearing Examiner issued his decision finding in favor of the licensee. The San Francisco attorney for the complainants is now preparing an appeal to the full Commission while CITIZENS is continuing to provide assistance.

Sandersville, Georgia

On behalf of the Southern Christian Leadership Conference and several local groups, CITIZENS filed a petition to deny the renewal of the license of a Georgia broadcaster who has refused to provide news coverage to a local civil rights movement. Virtually the entire black community -- over 50 per cent of the entire community -- has participated in the movement. In this instance, CITIZENS performed virtually all the legal work. After several attempts to negotiate an agreement, the Commission was asked to rule on the petition. The F.C.C. decided that a hearing was warranted. As a result, the licensee has agreed to amend its policies to provide increased coverage to the black community and has agreed to hire a black announcer. For rural Georgia blacks, this marks a

significant victory. Equally important, the Commission's ruling designating the matter for hearing potentially has substantial precedential value in the struggle to gain increased news coverage for blacks.

Columbus, Ohio

A coalition of groups in Columbus was aware of its legal rights, but lacked the legal resources to assert them. Building on and helping to guide their research and groundwork, CITIZENS aided them in preparing documents that reflect detailed analysis and stress the depth of feeling that creates a communications gap between black and white that is both overt and intensely subtle. The group signed its own documents and is building a continuing and viable community base.

Detroit, Michigan

The coalition of groups in Detroit is extremely well organized and has the benefit of extremely able local counsel who has borne the bulk of the workload. CITIZENS has provided continuing strategic advice and technical assistance where needed.

Madison, Wisconsin

Here, too, the local group is well organized. CITIZENS' contribution was minimal, providing sample documents and some strategic advice. The local group has done its work well. It is attempting to test a new theory that links station performance to profitability.

Right of Access. In cooperation with a volunteer attorney, CITIZENS filed a complaint with the F.C.C. on behalf of the Business Executives Move for Vietnam Peace (BEM). The complaint raised a number of novel issues. It argues that refusals to sell time for announcements opposing the Vietnam policy of the United States violate the Constitution. The First Amendment requires that the public's right to hear all forms of political speech must be guaranteed, and effective speech requires an effective forum. Potentially, the case could provide the basis for a new theory of access to the broadcast media. After a series of complicated legal maneuvers to force the F.C.C. to act on BEM's claim, the Commission decided the case

against BEM. An appeal has been taken to the courts. The case has been briefed and argued and is awaiting decision.

Presentation of Views Opposing Regular Military Service. The Baltimore Yearly Meeting of Friends, a Quaker group, was distressed by the failure of the broadcast media to present information about alternative service to the military. With CITIZENS' guidance and the aid of a student volunteer, time was sought to present ads opposing the desirability of bearing arms. Eventually, a Fairness Doctrine complaint was filed with the F.C.C. on the grounds that the Fairness Doctrine requires the stations to present information about alternative service. The Commission denied relief and an appeal was filed in the courts. The case was briefed and was awaiting oral argument when the army launched a new $10.6 million recruiting campaign. Expedited argument was sought and obtained and the case is now awaiting decision.

In the meantime, the army's stepped up recruiting campaign has stimulated a new challenge by SANE and the Hunter College National Student Association Peace Committee. CITIZENS has filed numerous complaints on

these matters with the Commission and is now engaged in a series of legal maneuvers to attempt to obtain court action quickly.

The cases have already established the applicability of the Fairness Doctrine to public service announcements. But they also raise important issues regarding the F.C.C.'s administration of the Fairness Doctrine and the relevant standards to be applied in Fairness Doctrine cases.

Right of Response to Presidential Addresses. The President commands tremendous power in gaining access to the American people via the broadcast media. CITIZENS believes this is as it should be, for elected officials should be encouraged and allowed to speak to the American people on vital issues. But what the American people hear must be a dialogue, not a monologue. After President Nixon had made a series of prime time addresses on all three networks presenting the Administration's views on the Indochina War, a bipartisan group of Senators supporting the 1970 McGovern-Hatfield Amendment (which would have restricted American involvement in the Indochina War) requested that CITIZENS aid them in assuring that the American people hear both points

of view on the question of continuing American involvement. Working with another attorney, CITIZENS filed a Fairness Doctrine complaint seeking time for those opposed to the war to present their views. Although the Commission's ruling fell short of recognizing an unconditional right to present opposing views each time the President speaks, the Commission did recognize that such a right of reply is necessary at some time. As a result of this complaint, which was resolved with several related but separate complaints, supporters of the McGovern-Hatfield Amendment were accorded prime time in which to offer alternatives to current policy. This marks a significant contribution to the robust debate on public issues which the broadcast media should be encouraging.

Alabama Educational Television Commission Challenge. The Alabama Educational Television Commission (AETC) operates a statewide network of educational television stations. The system enjoys one of the most sophisticated technical plants of any educational television system in the country. But unfortunately, the benefits of this technical plant were being denied black people. The AETC consistently refused to carry

NET programs of particular relevance to blacks. It offered little integrated programming and virtually no programming designed to meet the educational needs of blacks. It has never employed a black in a responsible position and a black has never served on any policy-making body of the AETC. On behalf of several Alabamans, with the aid of an outstanding student intern, CITIZENS launched a challenge to these exclusionary practices. The matter is now pending before the Commission.

Back Alley Theatre Complaint. The Back Alley Theatre is a non-profit local community theatre producing drama of high quality and particular relevance to the Washington, D.C. community. Early in 1970, it was invited to film an excerpt from one of its productions for airing on a local program. It chose to do a sequence from "The Dutchman," a controversial play that touches on the nature of black-white relationships in the context of an encounter between a black man and a white woman. It deliberately chose a scene in which no four-letter words were used. Although the station had invited Back Alley to appear on the show, it refused to allow the sequence to be filmed under circumstances

that indicate the station was motivated by its distaste for integrated couples, especially couples who kiss on camera. While not disputing the artistic merit of the excerpt, the station said it was too "suggestive."

CITIZENS filed a complaint with the Commission. The Commission declined to institute an investigation into the incident on highly technical (and disputable) legal grounds. But in the course of its opinion, the Commission was forced to deal with the issue of racial discrimination in programming. For the first time, it officially stated that even isolated instances of programming decisions based on racial factors could be grounds for disciplinary action against a licensee.

Program Format Changes. Because there are so many more radio stations than there are television stations, it is possible for them to have a relatively specialized format -- classical music, rock'n roll, soul, all news, etc. -- that caters to a discrete audience. This assures that most people in a community have at least one station that will be programmed to their taste. But increasingly, there is a tendency for stations to adjust their format to reach the broadest audience, without regard to the impact on those who enjoy and depend on the station. Thus those with

tastes differing from the majority are left without service. The problem has been particularly acute with respect to minority audiences.

When station KSOL in San Francisco decided to change its format from "soul" to middle-of-the-road and to discharge its black disc jockeys, it aroused a storm of protest. Not only did it leave San Francisco's black community without a local service; the circumstances of the format change suggest that the station may have been attempting to avoid its responsibilities to a black community becoming increasingly aware of its right to demand improved service. The Commission declined to act on the employment discrimination charge and found that the format change violated no rule or statute. Working with another attorney, CITIZENS filed a petition for reconsideration on behalf of the fired disc jockeys and a coalition of community groups. The petition raises novel questions concerning a licensee's responsibility to consult with his community before deleting a major program service. The challenge is cast it terms of a group's right to have a station catering to its particular needs. Moreover, the petition will test the Commission's responsibility to act on employment discrimination complaints.

In Greenwood, Mississippi, CITIZENS has instituted a similar challenge. There the only station serving the black community, which constitutes a majority of the population, has switched from a black-oriented format to a country and western format. Again several citizen groups have complained and black disc jockeys have been fired as a result of the format change. In this petition, CITIZENS has raised issues similar to those raised in the KSOL petition. But in addition, CITIZENS has asked the Commission to initiate proceedings during the license term instead of waiting until renewal time. The petition may yield a test of the Commission's duty to act between renewals to prevent deterioration in or deprivation of program service.

Black Licensees. A non-profit group of black community people in Syracuse approached CITIZENS about the possibility of filing an application for the last available FM frequency in Syracuse. There were already two applicants for the frequency and the matter had already been set for hearing. CITIZENS undertook to obtain a waiver of the Commission's rules to allow the group to file an application. A number of pleadings were filed. Finally a large

Washington law firm agreed to pick up the burden of attempting to intervene in the proceeding and has done an excellent job in prosecuting the group's legal claims.

Miscellaneous Activities. The range of miscellaneous activities engaged in by CITIZENS is extremely broad; their breadth is matched only by their number. Only a small sampling can be listed here and in only the briefest form.

- CITIZENS provided initial encouragement and substantial background assistance to a film producer who hoped to produce a television documentary on license renewals for a large television outlet. After Vice President Agnew's attacks on the media, however, the broadcaster's original enthusiasm for the film ebbed. The film producer maintains hope of some future revival of the project, in which case we will assist in an advisory capacity;

- When a freelance writer told the Commission of the deceptive news practices of a major New York television station, the station issued a subpoena to force his statement. The writer suspected the subpoena was part of a plan to blacklist him in the industry. CITIZENS filed a motion for a protective order on his behalf and represented him as counsel when he testified;

- CITIZENS has responded to numerous inquiries about the applicability of the Fairness Doctrine and the related personal attack rules. These inquiries have covered a broad range of topics such as attacks on agricultural workers and their attorneys; various Fairness Doctrine violations involving migrant laborers and their efforts to improve their lot; personal

attacks on civil rights activists; the presentation of views opposing freeway construction by local conservation groups; biased reporting on the Administration's Crime Bill; the effects of strip mining and the efforts being made to repair the environmental damage it causes; the success of anti-pollution additives in reducing noxious emissions from gasoline; etc.

- Aided several law student groups in filing rule makings with the F.C.C. or undertaking media study projects that resulted in comments on pending rule makings being filed with the Commission;

- Consulted with a black group attempting to purchase a station in a west coast city;

- Is aiding a number of citizen groups in organizing media projects in anticipation of the next license renewal date in their respective areas;

- Aided and is continuing to provide guidance to a businessmen's group that is syndicating commentaries to offset extreme right-wing syndicated materials;

- Provided assistance to a university professor organizing his class to monitor and possibly challenge a local station;

- Has established a network of relationships with both local and national groups working for reform in the media and has provided some of them with direct representation in proceedings before the F.C.C.;

- Drafted letters for several citizen groups urging the F.C.C. to have citizens participate in the deliberations of a committee set up by the Commission to review Commission procedures. As a result of the citizen letters, the Commission invited citizen groups to participate;

- Consulted with a public television station that wanted to show a panel show dealing with

censorship in the arts. The station feared for its license because some "four letter" words were used in the broadcast;

- Has provided individual answers to hundreds of inquiries from citizens across the country concerned with specific or general problems. Many require some research or the investigation of the possibility of a complaint.

- Informing citizens and community groups of their rights to participate in the decision-making process and to have access to the broadcast media, as well as educating and training advocates to assert these rights.

There is little to add to the discussion of these items in the text. CITIZENS regards these activities as vital aspects of our work. The student investigation has already been discussed. See p. ix. So, too, have the events in Atlanta. See p. xv.

We have participated in meetings, workshops, and seminars too numerous to enumerate and will continue to do so as a means of informing citizens about what actions they can take.

CITIZENS has come to be a regular calling spot for journalists and students. Although CITIZENS issues no press releases (with two minor exceptions in the past) and therefore has no working relationships with the press, it is frequently called on by columnists and working journalists to provide background information

and interpretative advice on various developments. As a result of these activities, a number of articles have appeared that have spread the word about the possibility of citizen involvement.

Equally important is the aid CITIZENS has provided students in preparing theses, papers, and articles for professional journals. This, too, is a vital aspect of our work. Not only does it help to alert professionals to citizen involvement, but equally important, it is beginning to yield a body of literature on the topic that can be drawn upon in representing groups before the Commission and the courts.

* * *

"[I]t is the public in individual communities throughout the length and breadth of our country who must bear final responsibility for the quality and adequacy of television service -- whether it be originated by local stations or by national networks.

"Under our system, the interests of the public are dominant. The commercial needs of licensed broadcasters and advertisers must be integrated into those of the public. Hence, individual citizens and the communities they compose owe a duty to themselves and their peers to take an active interest in the scope and quality of the television service which stations and networks provide and which, undoubtedly, has a vast impact on their lives and the lives of their children.

"Nor need the public feel that in taking a hand in broadcasting they are unduly interfering in the private business affairs of others. On the contrary, their interest in television programming is direct and their responsibilities important. They are the owners of the channels of television -- indeed, of all broadcasting."

--Television Network Program Procurement
U.S. House of Representatives
88th Congress, First Session
(1963)

Nothing since the invention of printing
has so drastically affected the way human
beings live, think and generally react
to their circumstances [as television].

--Malcolm Muggeridge

We're in science fiction now . . . .
Whoever controls the language,
the images,
controls the race.

--Allen Ginsberg

[Television] has it within its power
to decide what kind of people we become.
Nothing less.

--William Deeds, M.P.

[T]he communications media, ironically,
have failed to communicate.

--Kerner Commission Report